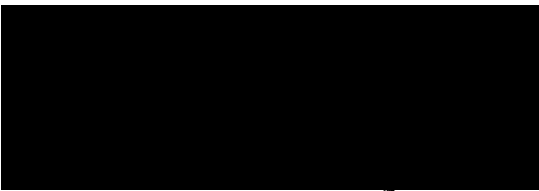




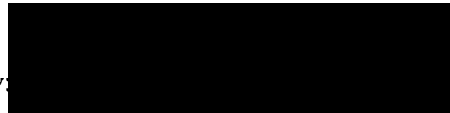
U.S. Citizenship
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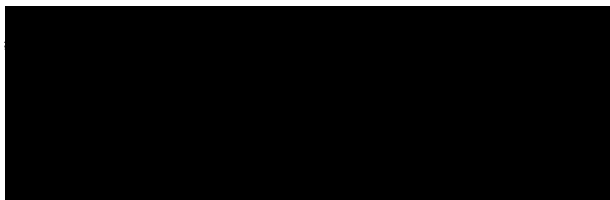
FILE: WAC-02-100-53197 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is ranch. It seeks to employ the beneficiary permanently in the United States as a barn boss. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

The director denied the petition because the petitioner failed to establish its ability to pay the proffered wage.

On appeal, counsel submits an appeal statement and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Regulations at 8 C.F.R. § 204.5(g)(2) state in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The petition's priority date in this instance is April 26, 2001. The beneficiary's salary as stated on the labor certification is \$16.11 per hour or \$33,508 per year.

With the initial petition, counsel submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE), dated March 26, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing. The RFE specified the petitioner's 2001 federal income tax return and evidence of wage payments to the beneficiary, if any.

In response to the RFE, counsel submitted the petitioner's California EED Quarterly Wage and Withholding Report for the quarter ending March 31, 2002. The report indicated that the beneficiary earned \$4,964.50 during the quarter. Counsel also submitted the petitioner's summary of bank accounts reflecting a positive bank balance of \$720,219.

In a second request for evidence (RFE), dated July 18, 2002, the director again required evidence to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing. The RFE specified the petitioner's 2001 federal income tax return and evidence of wage payments to the beneficiary, if any.

In response to the RFE, counsel submitted the petitioner's California EED Quarterly Wage and Withholding Report for the quarter ending June 30, 2002. The report indicated that the beneficiary earned \$6,950.30 during the quarter. Counsel also submitted the petitioner's 2001 Form 1040 U.S. Individual Income Tax Return. The tax

return for 2001 reflected gross adjusted income of - \$77,200. Schedule C of the Return reflected gross receipts of \$86,519, total expenses of \$217,374 and a net profit of -\$130,855.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition.

On appeal, counsel states that the petitioner has a line of credit in the amount of \$9,000,000 from a family trust fund and submits documentation to that effect. Counsel further states that the petitioner has paid gross wages during 2001 and 2002 in excess of \$180,000 and submits documentation to that effect. Counsel submits evidence that the sole proprietor and her spouse have a bank balance of \$720,000. Counsel also submits the 2001 and 2002 tax records for the sole proprietor. The tax records for 2000 reflect an adjusted gross income of \$5,973, gross income of \$32,612, total expenses of \$38,811 and a net profit of -\$6,199. Counsel also submits extensive evidence of the acquisition and ownership of the petitioner.

On appeal, counsel submits the petitioner's EED Quarterly Wage and Withholding Report for the 2002 quarter ending September 30, 2002. This report reflects that the beneficiary was paid \$5,957.40 during the quarter.

The record reflects that the beneficiary was paid \$4,964.50 during the first quarter of 2002, \$6,950.30 during the second quarter, and \$5,957.40 during the third quarter of 2002. The total gross wages paid to the beneficiary during the first three quarters of 2002 is \$17,872.20. The proffered annual wage is \$33,508.00.

Unlike a corporation, a sole proprietorship is not legally separate from its owner. Therefore the sole proprietor's income and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. A sole proprietor must show that he or she can cover their existing business expenses as well as pay the proffered wage. In addition, he or she must show that they can sustain themselves and their dependents. *See Ubeda v. Palmer*, 539. Supp. 647 (N.D. Ill. 1982), *aff'd.*, 703 F.2d 571 (7th cir. 1983).

The evidence of record indicates that the petitioner inherited her portion of the trust after her father passed away on December 19, 2002. The \$9,000,000 line of credit associated with the trust, however was available to the sole proprietor in July 2001, and therefore available to pay the proffered wage during 2001.

The bank statement represents funds that were available on January 9, 2002. On reviewing the statement, \$712,990 of the total balance of \$720,219 is earmarked as being owned by the sole proprietor of the petitioner. The sole proprietor's 2001 tax return reflects evidence of a cash asset that earned \$23,000 in interest suggesting a large balance during 2001 as well. Therefore it is concluded that the petitioner could pay the full \$15,635.80 proffered wage in 2001, and the remaining portion of the proffered wage for 2000 in addition to supporting her family.

After a review of the evidence it is concluded that the petitioner has established that it had sufficient available funds to pay the salary offered as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent residence.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.